

Internal Revenue Service

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Department of the Treasury

Washington, DC 20224

Third Party Communication: None

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Person To Contact:

, ID No.

Telephone Number:

Refer Reply To:

CC:CORP:BR2

PLR-142977-11

Date:

February 09, 2012

Legend

Parent =

Sub 1 =

Sub 2 =

State A =

State B =

Date 1 =

Date 2 =

Date 3 =

Date 4 =

Date 5 =

Accounting Firm =

Dear :

This letter responds to your request for a ruling dated October 13, 2011, submitted on your behalf by your authorized representative, requesting a determination under Treas. Reg. § 1.1502-75(b)(2) that Sub 1 and Sub 2 have joined in the initial consolidated federal income tax return filed by Parent for the taxable year ending on Date 4. The information submitted in that request and in later correspondence is summarized below.

Facts

Parent was incorporated in State A on Date 1. Parent is a calendar year taxpayer that uses the accrual method of accounting. On Date 2, Parent acquired all the outstanding stock of Sub 1, a State A corporation, in an acquisition that did not constitute a reverse acquisition under Treas. Reg. § 1.1502-75(d)(3). At the time of the acquisition, Sub 1 was the common parent of a consolidated group consisting of itself and its wholly owned subsidiary, Sub 2, a State B corporation ("Group 1"). As a result of the acquisition, Group 1 terminated under Treas. Reg. § 1.1502-75(d)(1) because Sub 1 ceased to be the common parent. As such, Sub 1 filed a final Form 1120 (U.S. Corporation Income Tax Return) on behalf of Group 1 for the short period ending on Date 2.

Parent retained Accounting Firm to prepare its tax return for the short taxable year beginning on Date 1 and ending on Date 4. Parent informed Accounting Firm that Parent, Sub 1, and Sub 2 ("Group 2") intended to file a consolidated Federal income tax return. Parent timely filed Form 1120 on behalf of itself, Sub 1, and Sub 2 and indicated that the return was a consolidated return (the "Year 1 Consolidated Return").

The Year 1 Consolidated Return included the items of income, gain, deduction, loss, and credit attributable to Sub 1 and Sub 2 for the period beginning on Date 3 and ending on Date 4. In addition, attached to the return was Form 851 (Affiliations Schedule), identifying Sub 1 and Sub 2 as subsidiaries that were joining in the making of the consolidated return with Parent.

On or about Date 5, it was discovered that a Form 1122 (Authorization and Consent of Subsidiary Corporation to Be Included in a Consolidated Return) for each of Sub 1 and Sub 2 was not filed with Parent's tax return for the taxable year ending on Date 4. The statute of limitations under section 6501(a) of the Internal Revenue Code has not expired for the return filed for the taxable year ending on Date 4.

Representations

Parent, Sub 1, and Sub 2 make the following representations:

- (a) Except for the failure to timely file Forms 1122, Parent was eligible to file a consolidated federal income tax return for the taxable year ending on Date

4 that included Sub 1 and Sub 2 as members for the period beginning on Date 3 and ending on Date 4.

- (b) All of the income and deductions attributable to Sub 1 and Sub 2 for the period beginning on Date 3 and ending on Date 4 were included in the initial consolidated federal income tax return timely filed by Parent on behalf of Group 2 for the taxable year ending on Date 4 and for each taxable year thereafter.
- (c) Had the Year 1 Consolidated Return been properly filed, no change in federal income tax liability would have occurred (or will occur) in any Group 2 consolidated return year relative to the liability stated in the federal income tax returns actually filed.
- (d) Neither Sub 1 nor Sub 2 filed a separate federal income tax return for the period beginning on Date 3 and ending on Date 4, or any taxable year thereafter.
- (e) Parent did not file a separate federal income tax return for the short period ending on Date 4 or any taxable year thereafter.
- (f) Each of Sub 1 and Sub 2 was included on the Form 851 (Affiliations Schedule) included with the initial consolidated federal income tax return timely filed by Parent on behalf of Group 2 for the taxable year ending on Date 4 and for each taxable year thereafter.

Applicable Law

Section 1.1502-75(a)(1) of the Income Tax Regulations provides, in part, that an affiliated group of corporations which did not file a consolidated return for the immediately preceding taxable year may file a consolidated return in lieu of separate returns for the taxable year, provided that each corporation which has been a member during any part of the taxable year for which the consolidated return is to be filed consents, in the manner provided in Treas. Reg. § 1.1502-75(b), to the regulations under section 1502.

With regard to the consent of a corporation for a group's first consolidated year, Treas. Reg. § 1.1502-75(b)(1) provides, as a general rule, that the consent of a corporation is made by such corporation joining in the making of the consolidated return for such year and that a corporation is deemed to have joined in the making of such return for such year if it files a Form 1122 in the manner specified in Treas. Reg. § 1.1502-75(h)(2).

Treas. Reg. § 1.1502-75(h)(2) provides that if, under the provisions of Treas. Reg. § 1.1502-75(a)(1), a group wishes to file a consolidated return for a taxable year, a

Form 1122 must be executed by each subsidiary. The regulation provides rules for properly executing Forms 1122, and also provides that a Form 1122 is not required for a taxable year if a consolidated return was filed (or was required to be filed) by the group for the immediately preceding taxable year.

Treas. Reg. § 1.1502-75(b)(2) provides that if a member of the group fails to file Form 1122, the Commissioner may under the facts and circumstances determine that such member has nevertheless joined in the making of a consolidated return by such group. Factors that the Commissioner will take into account in making this determination include the following: (i) whether or not the income and deductions of the member for such taxable year were included in the consolidated return; (ii) whether or not a separate return was filed by the member for that taxable year; and (iii) whether or not the member was included in the affiliations schedule, Form 851, for such taxable year.

Where the Commissioner, under the facts and circumstances, determines that the member has joined in the making of the consolidated return, such member will be treated, for purposes of Treas. Reg. § 1.1502-75(h)(2), as if it had filed a Form 1122 for such year. Treas. Reg. § 1.1502-75(b)(2).

Ruling

Based solely on the information submitted and representations made, we rule that under Treas. Reg. § 1.1502-75(b)(2), Sub 1 and Sub 2 each is treated for purposes of Treas. Reg. § 1.1502-75(h)(2) as if it had properly filed Form 1122 with the initial consolidated federal income tax return filed by Parent on behalf of Group 2 for the taxable year ending on Date 4.

Caveats

Except as expressly provided herein, no opinion is expressed or implied concerning the tax consequences of any aspect of any transaction or item discussed or referenced in this letter, or about the tax treatment of any condition existing at the time of, or effects resulting from, any transaction or item that is not specifically covered by the above ruling.

The ruling contained in this letter is based upon information and representations submitted by the taxpayer and accompanied by a penalty of perjury statement executed by an appropriate party. This office has not verified any of the material submitted in support of the taxpayer's ruling request. Verification of the information, representations, and other data may be required as part of the audit process.

Procedural Statements

This ruling is directed only to the taxpayer requesting it. Section 6110(k)(3) provides that it may not be used or cited as precedent.

A copy of this letter must be attached to each Federal income tax return to which it is relevant. Alternatively, taxpayers filing their returns electronically may satisfy this requirement by attaching to the return a statement that provides the date and control number of this letter ruling.

Pursuant to the power of attorney on file in this office, a copy of this letter is being sent to your authorized representative.

Sincerely,

Grid R. Glyer
Acting Assistant to the Branch Chief, Branch 2
(Corporate)

cc: